

R. Jeremy Adamson (12818) (jadamson@kba.law)
Chad S. Pehrson (12622) (cpehrson@kba.law)
Robert P. Harrington (12541) (rharrington@kba.law)
Stephen Richards (19332) (srichards@kba.law)
KUNZLER BEAN & ADAMSON, PC
50 West Broadway Ste 1000
Salt Lake City Utah 84101
Telephone: (801) 994-4646

*Attorneys for Defendants, Counter Claimants
and Third-Party Plaintiffs*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CAPANA SWISS ADVISORS AG, a Swiss corporation; AMERIMARK AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation; NICHOLAS THAYNE MARKOSIAN, an individual; JOHN KIRKLAND, an individual; and VICKY SMALL, an individual,

Defendants.

RYMARK, INC., a Utah corporation; and NICHOLAS THAYNE MARKOSIAN, an individual,

Counter Claimants,

vs.

CAPANA SWISS ADVISORS AG, a Swiss corporation, and Amerimark Automotive AG, a Swiss Corporation,

Counter Defendants.

**MOTION FOR LEAVE TO FILE
EXHIBIT-PLAINTIFFS' JULY 15
PRIVILEGE LOG-
UNDER SEAL**

Case No.: 2:23-cv-00467-TS-CMR

Judge: Hon. Ted Stewart
Magistrate Judge: Hon. Cecilia M. Romero

RYMARK, INC., a Utah corporation; and
NICHOLAS THAYNE MARKOSIAN, an
individual,

Third-Party Plaintiffs,

vs.

SHAEN BERNHARDT, an individual;
ASHLEY MIRON LESHEM, an individual;
DAVID HESTERMAN, an individual;
NICOLAI COLSHORN, an individual;
STEFAN KAMMERLANDER, an individual;
ALEXANDER COENEN, an individual;
MARTIN FASSER HEEG, an individual;
AMERIMARK GROUP AG, a Swiss
corporation; and
PHILOMAXCAP AG, a German corporation,

Third-Party Defendants.

Rymark, Inc. (“**Rymark**”) hereby moves for leave under DUCivR 5-3(b) to file the following Exhibit to its Reply Memorandum in Support of Rule 4(m) Extension of Time to Serve Ashley Miron Leshem: Exhibit B, Plaintiffs’ Privilege Log Dated July 15, 2024.

Rymark is not aware of any basis for Plaintiffs’ privilege log to be sealed and not part of the public record in this case. Nonetheless, Plaintiffs identified the privilege log as “CONFIDENTIAL” and therefore Rymark understands that Plaintiffs may have an opportunity to persuade this Court why the privilege log should be sealed and unavailable as part of the public record in this action.

Rymark will oppose that request, including because in the United States, “there is both a constitutional (First Amendment) and common law right of public access to judicial documents.” *Sparta v. Hearts for Hospice, LLC*, No. 2:12-801, 2023 WL 3080557, at *1 (D. Utah Apr. 25,

2023) (Stewart, D.J.). “Courts have long recognized a common-law right of access to judicial records,” and although this right is “not absolute,” it may be limited only when “countervailing interests heavily outweigh the public’s interest in access.” *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012). The party seeking to restrict access - here, Plaintiffs - bears the burden to show “some significant interest that outweighs the presumption.” *Id.*; *see also Sparta*, 2023 WL 3080557, at *1 (applying this “significant interest” standard). This interest must be “real” and “substantial,” and the burden to show it is “heavy.” *Colony*, 698 F.3d at 1242. “[S]pecific argument or facts” as to why the “confidentiality” of documents “outweighs the presumption of public access” are required before a court may seal the documents. *Id.* the moving party must show a “significant interest that outweighs the presumption” of public access, and that this interest must be supported by “specific argument or facts.” *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012).

The privilege log does not contain any proprietary commercial or financial information and Rymark is aware of no basis as to why or how Plaintiffs could successfully overcome the presumption of public access.

DATED: December 26, 2024.

KUNZLER BEAN & ADAMSON, PC

/s/ Chad S. Pehrson

R. Jeremy Adamson
Chad S. Pehrson
Robert P. Harrington
Stephen Richards

*Attorneys for Defendants,
Counter Claimants and
Third-Party Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December 2024, I filed the foregoing **MOTION FOR LEAVE TO FILE EXHIBIT-PLAINTIFFS' JULY 15 PRIVILEGE LOG-UNDER SEAL** via the Court's Cm/ECF system, which provided notice of such filing to all counsel of records.

/s/Chad S. Pehrson